



UNITED STATES PATENT AND TRADEMARK OFFICE

SEP 21 2007

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON VA 22201

In re Application of
Oliver Schadt et al
Serial No.: 10/511,155
Filed: October 14, 2004
Attorney Docket No.: MERCK-2932

:
:
: PETITION DECISION
:
:

This is in response to the petition under 37 CFR 1.144, filed June 19, 2007, requesting withdrawal of an improper Lack of Unity requirement. The petition was only recently forwarded for consideration.

BACKGROUND

A review of the file history shows that this application was filed under 35 U.S.C. 371 and accepted on October 14, 2004, and contained claims 1-18. In a first Office action, mailed January 25, 2006, the examiner set forth a 9-way Lack of Unity requirement.

Applicants replied on February 27, 2006, electing Group VIII and a species, with traverse.

The examiner mailed a non-Final Office action to applicants on May 8, 2006, responding to the traversal, but maintaining the requirement. The elected claims were then rejected under 35 U.S.C. 101, 35 U.S.C. 112, first and second paragraphs, and 35 U.S.C. 102(b). Applicants replied on October 10, 2006.

The examiner mailed a Final Office action to applicants on January 19, 2007, making the Lack of Unity Final and maintaining some of the previous rejections of record.

Applicants replied by filing an amendment after Final on May 24, 2007 and a Notice of Appeal and Petition of the Lack of Unity requirement on June 19, 2007. Unaware of the June 19, 2007, papers, the examiner mailed a new Lack of Unity requirement to applicants on June 22, 2007.

Applicants filed an election in response thereto with a traversal on July 20, 2007. The examiner mailed a new non-Final Office action to applicants on September 11, 2007, to which applicants have not replied.

DISCUSSION

Inasmuch as the petition is directed to a Lack of Unity requirement which has been withdrawn by the examiner, the petition is moot and is dismissed. It should be noted that the Notice of Appeal is being held in abeyance in view of the continued prosecution.

DECISION

The petition is **DISMISSED**.

Applicant remains under obligation to reply to the Office action mailed September 11, 2007.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.

John LeGuyader
Director, Technology Center 1600